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COMMITTEE AGAINST TORTURE

Thirteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 201st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 November 1994, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.201/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of the Libyan Arab Jamahiriya (CAT/C/25/Add.3)

1. At the invitation of the Chairman, Mr. Hafyana (Libyan Arab Jamahiriya) took a place at the Committee's table.

2. Mr. HAFYANA (Libyan Arab Jamahiriya), introducing the report, said that it covered the legislative and executive steps taken by the Jamahiriya to implement the provisions of the Convention, ways in which investigations, arrests and searches were carried out, preventive measures, extradition, the status of international conventions vis-à-vis national legislation and ratification mechanisms.

3. Despite its conclusion, following past discussions, that the Libyan judicial system was not inconsistent with the provisions of the Convention (para. 3, subpara. (c)), the Committee had reaffirmed the need to include a textual comparison between Libyan legislation and the provisions of the Convention in the report, and such a comparison had thus been included in the current report, focusing in particular on the structure of the legislation in force, the procedures used, and traditional laws.

4. It was clear from all Libyan legislation that the Jamahiriya attached great importance to the principles of the Convention, the International Covenants on Human Rights and their respective annexes and protocols. All international conventions to which the Libyan Arab Jamahiriya acceded became binding following ratification by the Peoples' Assemblies and publication in the Official Gazette, and had to be applied as an integral part of national legislation. Furthermore, any provisions of an international convention which did not have an equivalent national provision were applied in the terms in which they were presented in the Convention. Individuals could therefore invoke international conventions in the courts, including the Convention against Torture, and judges had discretionary powers under the law to compare the texts and apply the provisions of the conventions.

5. Although the Jamahiriya fully appreciated that the whole Convention was binding on the States parties, its comparison had been confined to articles 1 to 16 of the Convention, because they contained the procedural obligations, whereas the second part was concerned more with the Committee and role of the secretariat.

6. In conclusion, he drew attention to a number of translation corrections and editorial changes that needed to be made to paragraphs 6, 8 and 9, subparagraphs (a) and (c), of the French and English texts, and thanked the Committee for its cooperation and efforts to promote human rights in member States.

7. Mr. SORENSEN (Country Rapporteur), having commended the Government of the Libyan Arab Jamahiriya for the timely submission of its second periodic report and for meeting all the Committee's criteria for both initial and periodic reports, said that the description and analysis of Libya's views on the Convention in part B of the report were particularly valuable and parts A and B of the report, together with the introduction by the delegation, made it clear that the Convention was part of the Jamahiriya's legal system and could be used wherever domestic legislation did not have an appropriate provision. Referring particularly, therefore, to paragraph 10 of the report, he wondered whether the Convention or domestic legislation would take precedence if a situation arose in future on which the two systems conflicted.

8. In connection with article 1 of the Convention (paras. 25 to 29 of the report), although torture was a specific crime in Libya and the word "torture" appeared in article 435 of the Libyan Penal Code, the Penal Code appeared to contain no definition of torture, possibly because the definition in article 1 of the Convention sufficed. The Committee would, nevertheless, like confirmation of that position.

9. As article 435 of the Penal Code provided that a public official could receive a penalty of 3 to 10 years' imprisonment for torture, he wondered what the usual sentence would be for an official who committed rape followed by murder in view of the fact that, in some countries, that was a not uncommon form of torture. He also wondered what term of imprisonment might be imposed on a private individual who committed the same crime.

10. In connection with article 2 of the Convention, the fine of up to 250 dinars provided for in article 431 of the Penal Code (para. 32 of the report), seemed to be a mild penalty for an act of violence and the Committee therefore sought the delegation's comments on the relationship between articles 431 and 435 of the Penal Code.

11. While the Committee recognized that the Convention was law in the Jamahiriya if domestic legislation did not cover a particular issue, it doubted whether ordinary people - and particularly the lower ranks of the police or military - were acquainted with its content. He suggested, therefore, that article 2, paragraph 3, be given greater attention in domestic legislation and regulations. It was particularly important that the rank and file of the police and the military should know and have written instructions that they were not allowed to obey an unlawful order, such as an order involving torture. The Committee therefore wondered whether their regulations or instructions contained any explanation of that situation, including their duty to refuse to carry out unlawful orders.

12. In connection with article 3 of the Convention, the Jamahiriya was to be congratulated on being a place of refuge for persecuted persons and freedom-fighters, as explained in paragraph 36 of the report. However, the problem mentioned in connection with article 2 also arose in connection with article 3: it was unclear whether the border police was aware that article 3 was in force in Libya, or whether the border police and judiciary dealing

with the question of asylum-seekers had appropriate instructions and recommendations which would ensure that the Convention was fully implemented in practice. The Committee also wondered whether the peace agreement between Israel and the PLO in any way affected the residence of the many Palestinians living in Libya.

13. The report made no reference to article 10 of the Convention, and no answers to questions on article 10 had been given in the Libyan statement of 19 November 1992. The Committee believed that education was crucial in preventing torture, and would be glad to hear whether any education on human rights was given to police, prison staff, the military, and the judiciary. If there were such education, it would then like to know how many hours of teaching were given, whether there were any textbooks on the subject, and whether any system of postgraduate education existed.

14. The State party was also obliged to ensure that the prohibition of torture was included in the training given to medical staff. He asked, therefore, whether that prohibition formed part of the curriculum of the medical schools, and who conducted such training courses.

15. In connection with article 11, he pointed out that the critical period for a detainee was the time that elapsed between his arrest by the police and his appearance before a judge, especially if he was held incommunicado. He consequently inquired what the maximum period for which a person could legally be held incommunicado was and who took the decision in the matter; for how long a police officer could legally hold a person incommunicado without referring to a higher authority; for what period a prosecutor or a judge could order incommunicado detention, and whether that period could be renewed; whether a person so held could have access to a lawyer chosen from a list agreed between the Bar Association and the Government; and whether access to a lawyer could be postponed, and if so, for how many hours, and by what authority.

16. Similarly, he asked whether a detainee had access to a doctor, either of his own choice or selected from an approved list; whether an arrested person was informed, both orally and in writing, of his right to see a doctor and a lawyer, and to have his family notified; and whether there were any written instructions to police and prosecutors on those matters.

17. In connection with article 14, it had not been made entirely clear how redress was given. Paragraph 69 of the report described the procedures whereby victims could claim compensation for illegal acts perpetrated against them. If, however, the perpetrators of such acts were civil servants, it was unlikely that they would be in a position to pay large sums to the victim. He asked whether, in such cases, the State was responsible for the actions of its servants, paid the compensation and endeavoured to recover it from those responsible at a later stage.

18. Persons who had suffered torture needed medical rehabilitation to enable them to return to normal life, and he would thus like to know whether any system of rehabilitation existed in Libya.

19. He noted that no reply had been given to the Committee's earlier request for information on the number of cases of torture in Libya in which proceedings had been instituted, and on the results of those proceedings. The Committee was still receiving reports about ill-treatment and torture in Libya from a variety of sources, including Amnesty International and the International Labour Office. Those sources alleged that falaka (beating the soles of the feet), hanging, and electric shocks had been used. Reportedly, suspects were being held incommunicado for months or even years, and summary executions, as well as unfair and incorrect trials, were taking place. He would be glad to hear the comments of the Libyan representative on those allegations.

20. In that connection, he would be interested in knowing how many members of the police or military had been accused of infringing articles 143 and 145 of the Libyan Penal Code, how many cases had been brought to court and what the outcome of the trials had been.

21. Mr. BURNS (Country Rapporteur), having associated himself with the compliments paid to the Government of the Libyan Arab Jamahiriya on its success in complying with reporting requirements under the Convention, asked with reference to paragraph 9, subparagraph (c), of the report, what the nature of the discretionary powers vested in the courts was. It had been stated in earlier reports that among the crimes for which capital punishment might be imposed were "serious economic crimes". He would like the representative to explain what crimes fell into that category. The Committee would also like to know whether, in the Libyan penal system, female detainees or prisoners were segregated from males, and juveniles from adults; how many prisons there were in Libya, and what the total prison population was.

22. Paragraphs 70 to 72 of the report clearly showed that Libya was fulfilling its obligations under article 15 of the Convention. He noted in particular the statement in paragraph 71 (a) that the Supreme Court had ruled that any confessions obtained under coercion were inadmissible.

23. Paragraph 35 of the report stated that Libyan law did not permit the extradition of a Libyan citizen. He wondered how, if another State party to the Convention requested the extradition of a Libyan citizen, asserting that he had committed the crime of torture on that State's territory, the request would be dealt with and, more generally, how the ban on the extradition of Libyan citizens was to be reconciled with the statement in paragraph 50 of the report regarding the conditions governing extradition of criminals under article 9 of the Libyan Penal Code.

24. In conclusion, he wished to thank the Libyan Government for a very comprehensive report, which demonstrated that Libya had responded to many of the Committee's past requests.

25. Mr. BEN AMMAR said he much appreciated the extent to which the Libyan Arab Jamahiriya had implemented not only the Convention but also most other international human rights instruments in its legislation. Nevertheless, he had noted with interest the statement in paragraph 84 of the report that, regardless of legal and judicial safeguards, individual violations would inevitably occur, the more so as several non-governmental organizations had alleged that many people in Libya had been victims of human rights violations of various kinds. He inquired, therefore, whether any cases of torture had been recorded in the period that had elapsed since the last report, and if so, whether they had been investigated by the authorities, whether any judicial proceedings had been initiated, what penalties had been imposed and whether any compensation had been awarded to the victims.

26. Article 11 of the Convention required the State party to keep under review interrogation methods and practices, as well as custody arrangements, with a view to preventing torture. In that connection, paragraph 61 of the report gave details of the system of prison inspection. He asked whether there was any corresponding system of inspection of police stations, what regulations governed detention in custody and whether there was a written code of police ethics. Replies to the questions asked by the two country rapporteurs concerning the right of a detainee to communicate with relatives, to receive a visit from a doctor, and to request the assistance of counsel would be enlightening, in that regard. He understood that the Government of Libya had invited Amnesty International to visit the country and would like to know whether that visit had already taken place, or whether it was planned for the future.

27. He himself attached great importance to article 10 of the Convention and would have appreciated more information about what was being done to implement it. Clear and precise instructions on the treatment of detained and arrested persons needed to be issued to police, magistrates, prison officers and medical staff at all levels. Since all human rights were interrelated and were essential to guarantee the integrity of the individual, the subject of human rights in general should form part of the curriculum of schools and universities, as well as of faculties of law and police academies.

28. In conclusion, he hoped that the Libyan Arab Jamahiriya would make the declaration provided for under article 22 of the Convention, particularly since it had ratified the Optional Protocol to the International Covenant on Civil and Political Rights and thus recognized the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction concerning any violations of the rights set forth in the Covenant. It would be recalled that article 7 of the Covenant specifically provided that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

29. Mrs. ILIOPOULOS-STRANGAS, referring to paragraph 6 of the report, asked whether international conventions ratified by the Jamahiriya were binding solely on the national judiciary or on all State organs and, in particular, on the executive.

30. She also wished to know for what crimes a person could be placed in incommunicado detention, whether such detention applied to political crimes only or to all crimes and whether a foreigner being held incommunicado had the right to inform his embassy.

31. Mr. REGMI, noting that the report spoke of the provisions of the Convention against Torture and the corresponding provisions in Libyan legislation, asked what legislative measures had been adopted during the period between the date of submission of the previous report and the date of the submission of the second report.

32. A number of non-governmental organizations, including Amnesty International, had reported on alleged cases of political detention and of detained persons having been denied fair trials. He inquired, in that connection, whether the persons arrested after the events of March 1988 were still being held incommunicado.

The public meeting rose at 11.30 a.m.